

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

MARINE SPILL RESPONSE CORPORATION

Employer

Case 19-RC-14820

and

INLANDBOATMEN'S UNION OF THE PACIFIC,
MARINE DIVISION, ILWU

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

I. SUMMARY

The Employer is engaged in the business of providing clean-up services for oil, substance spills, and natural disasters, with a facility in Tacoma, Washington. Employer also has 33 other manned facilities located throughout the United States, including five in Washington State other than the facility in Tacoma. At issue in this case is whether the petitioned-for-unit of four responder employees at the Tacoma facility is an appropriate unit. Employer argues that in light of the functional integration, employee interchange, centralized control over operations and labor relations, and employees' identical terms and conditions of employment, the single-facility unit sought by Petitioner is inappropriate. Employer therefore contends that an appropriate unit must also include all six of the Employer's Washington State facilities.³ Employer also argues that Jason Connelly, one of the responders employed at the Tacoma facility, should be excluded from any unit found appropriate as he is a Section 2(11) supervisor because he assumes the regular supervisor's duties for significant periods of time.

¹ Employer and Petitioner filed timely briefs, which were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ The Employer's position, which is set forth in its brief to the Region, differs from its position taken at the hearing. At the hearing, the Employer contended that the smallest appropriate unit must include responders employed at the Employer's facilities that make up its Pacific Northwest Region, which includes the Washington State facilities and the facilities located at Astoria, Oregon, and Honolulu, Hawaii.

Based on the record evidence and the parties' contentions and arguments, I find that the single-facility unit sought by Petitioner is an appropriate unit and that Connelly should be included in the unit because the Employer failed to meet its burden of establishing that he is a supervisor under the Act. Accordingly, I have directed an election in a unit comprised of the four responders employed at Employer's Tacoma, Washington facility.

Below, I have provided a section setting forth the evidence, as revealed by the record in this case, relating to Employer's operations and the factors that the Board analyzes in determining whether the presumption favoring a single-facility unit has been rebutted, as well as that related to Connelly's alleged assumption of supervisory duties. Following the "Evidence" section is my analysis of the applicable legal standards in this case, my conclusion, and a section directing an election in the Unit.

II. EVIDENCE

A. Employer's Operations

Employer engages in the business of providing clean-up services for oil spills, substance spills, and natural disasters of any magnitude anywhere in the coastal waters of the United States, including the Caribbean. Employer's corporate and administrative headquarters is located in Herndon, Virginia. It has approximately 34 staffed locations and employs approximately 150 responders throughout the country. Employer also maintains numerous other sites across the country where it has only equipment. These locations are grouped into four regional responses centers and areas of operation: Eastern Region; Southern Region; California Region; and the Pacific/Northwest Region. Eight of Employer's manned facilities are situated in the Pacific/Northwest Region: Honolulu, Hawaii; Astoria, Oregon; Anacortes, Washington; Bellingham, Washington; Everett, Washington; Port Angeles, Washington; Seattle, Washington; and Tacoma, Washington.

Regional vice presidents head each of the four regions. Richard Wright heads the Pacific/Northwest Region. Wright is the former president of Clean Sound Cooperative, another spill response organization, which merged with Employer on April 1, 2005. As a result of the merger, Employer acquired Clean Sound's vessels and hired many of their employees. Wright is responsible for the administration, management, leadership, and operation of Employer's eight sites in Washington, Oregon, and Hawaii. Wright is based at Employer's Pacific/Northwest regional headquarters, which is located in Everett.⁴ The Regional headquarters houses various administrative personnel who oversee human resources, training, safety, finance, and other functions in the region. Area Response Manager Barry Kevan, who reports to Wright and oversees the Astoria, Honolulu, Seattle, and Tacoma facilities, is also located in Everett.

Employer's Tacoma facility is situated on Commencement Bay, which is an area of risk for oil spills due to tanker and non-tanker shipping. The site has an office, which is in a trailer that sits adjacent to the dock of another company, a large barge and several response vessels. Like each of the other manned facilities, Tacoma has a site response supervisor. That supervisor, Herb Gulliford, reports to Area Response Manager Kevan. Gulliford supervises four employees at the Tacoma facility: master responders Jason Connelly, Klete Freudenstein, and Jack Jones, and responder Vladimir Schedrin.⁵

⁴ The regional headquarters is in addition to Employer's manned facility at Everett listed above.

⁵ Schedrin's name does not appear in Employer's regional personnel chart, which was revised on March 31, 2006, because Employer hired Schedrin shortly before the April 4 starting date of the hearing.

B. Unit Factors

1. Centralized Control of Operations and Labor Relations/Local Autonomy

Employer manages its operation through its corporate headquarters in Herndon and the four regional offices. Corporate headquarters establishes and amends employment policies and procedures for employees throughout the company. This includes employee pay scales, benefits, job descriptions, hiring/firing criteria, performance evaluations, and vacation leave policy. The pay scales and policies are identical for employees nationwide. Employer's headquarters also handles the payroll after the site supervisor signs employees' timesheets and the regional human resources manager approves them. Headquarters also determines the staffing level for each location, as well as the pool of money available for merit increases and overtime. Health, safety, environmental, and security standards, which apply uniformly to all of Employer's sites, are also established at Employer's headquarters in Herndon.

Regional personnel are involved in employee hiring, discipline, evaluation, and termination. Laura Eaton, Employee Services Administrator for the Pacific/Northwest Region, applies the corporate employment policies at the regional level in consultation with Wright and an area response manager. When a responder position is posted, Eaton and the appropriate site supervisor review the applications and determine who will receive interviews. Both interview the applicants and following consultations, make recommendations to Kevan and Wright, who makes the final decision to hire. With respect to a supervisory position or a position that has special requirements, however, corporate headquarters may make the final hiring decision. Regional personnel will also review employee evaluations and make the final determination regarding written discipline. The final determination regarding the termination of an employee is made at corporate headquarters. There is no evidence, however, that Employer has terminated any employees at the Tacoma facility.

There is also evidence of local autonomy in Employer's operation. Tacoma response supervisor Gulliford testified that he is in charge of the scheduling of activities, work, and training at Tacoma, and is also responsible for administering the local budget and safety matters. Gulliford assigns work based on his assessment of which responder is best suited for the assignment. For example, he testified that he would assign maintenance work involving mechanical skills to master responder Freudenstein, and would assign work involving safety skills to master responder Connelly. Gulliford also has the authority to make certain decisions without obtaining prior approval. Thus, he can authorize overtime and weekend work for employees provided he stays within the overtime budget set by corporate headquarters. He also approves employee requests for vacation and sick leave, and also can verbally discipline employees. As noted above, Gulliford is also very involved in the hiring process. Although he does not have the authority to make final hiring decisions, the two recommendations that he has made to hire responders at Tacoma have been approved. Gulliford also drafts the initial performance evaluations for responders. The evaluations are reviewed by Eaton and Kevan before Gulliford discusses the evaluation with the individual employee. Like the other response supervisors, Gulliford has the authority to set the starting and end workday times for the responders' 8-hour day provided that the responders work during the core hours between 9 a.m. and 3 p.m. The record demonstrates that a few facilities in the Pacific/Northwest region have different starting and end times from Tacoma.

2. Functional Integration

In light of Employer's business model, there is evidence of functional integration of Employer's operations on a nationwide basis. Employer's operation is set up to respond to spills that vary in size from small to catastrophic. In order to respond to large and catastrophic spills, Employer "cascades" (temporarily sends) responders to the geographical location of the spill for periods ranging from days to weeks. Responders who are cascaded to these locations perform clean up operations using the vessels and other equipment that is available at the nearest facilities maintained by Employer. Employer also relies on contractors to perform cleanup operations depending on the size of the spill. Both the contractors' personnel and responders from outside the region have familiarity with the equipment at the site of the spill based on training that Employer has provided.

There is also evidence of functional integration on a regional basis. Responders at each facility must be re-qualified to establish their competency to operate vessels located at other facilities in the Pacific/Northwest Region. For the most part, responders from Astoria and Honolulu have not received certain competency training on vessels in Washington State, but Employer has developed a plan whereby they will receive such training starting in 2007. Employer requires various other types of training that requires responders to travel from their home facility to another facility in the region, as well.

Employer coordinates maintenance and repair work across facility lines on a regional basis. Thus, Employer has established a team of four responders at Everett that travels to other facilities in the region to assist with maintenance if the other facility is short-staffed or is running behind in completing monthly maintenance activities.

While functional integration of Employer's operations exists on a national and regional basis, the record also reveals that the Tacoma facility retains its local identity as well. Tacoma responders report to the Tacoma facility and spend the vast majority of their time at their own facility testing, maintaining, and operating the equipment located there. Spills that require Tacoma responders to cascade are relatively infrequent and the vast majority of training and drills for Tacoma responders occurs at Tacoma rather than other facilities

3. Similarity of Skills, Functions, and Working Conditions

Job functions and skills are essentially the same for responders across the country. As the individuals responsible for responding to oil and other material spills, responders engage in the three components of spill response and recovery. These components include skimming the oil off the water; booming, which is containing the material to a distinct area for recovery; and storage of the oil or material recovered. In order to perform their job, responders must have skills to operate and maintain the equipment necessary for spill response and recovery. Thus, responders must know how to operate various skimming vessels, booms, and barges. Although spills do not occur on a frequent basis, responders must be able to operate the equipment to respond on an immediate basis. Accordingly, their job function requires them to spend significant amounts of time engaged in operating and performing preventive maintenance on the equipment.

Terms and conditions of employment are virtually identical for responders across the country. Responders have the same pay scale regardless of location, receive the same benefits, and are subject to the same employment policies. Although they all work the core

hours of 9 a.m. to 3 p.m., the starting and ending times for responders varies among Employer's Washington State facilities.

4. Degree of Employee Interchange and Transfers

Temporary employee interchange occurs through backfill, response to spills, training, and maintenance work. Backfill is the term used by Employer to denote the movement of an employee from one facility to another to cover an employee's absence. Backfill has occurred at facilities in the Pacific/Northwest region. There is no evidence, however, of employees backfilling at Tacoma since the merger on April 1, 2005, except to cover absences resulting from master responders' attendance at the hearing in this matter. Master responders Connelly and Freudenstein testified that they have never backfilled at other facilities in the region. Gulliford estimated that it has occurred "probably half a dozen" times, though he could not provide examples. Tacoma responders have been cascaded to Louisiana to deal with the disasters resulting from Hurricanes Katrina and Rita, as well as a spill in New Jersey. While responding to those disasters, responders from the Pacific/Northwest Region, including those from the Tacoma facility, worked with responders from other regions and under the supervision of supervisors from Employer's other regions.

Employer introduced into the record numerous documents showing that responders from Employer's Washington State facilities travel to other Employer facilities in the state to receive various types of training and to obtain competency on vessels located at those facilities. Examples included responders from Tacoma traveling to other sites for training, and responders from other facilities coming to the Tacoma facility to train on its vessels and receive other training. Employer also provided evidence of responders from one facility traveling to others to work on maintenance projects. For example, Freudenstein worked on an engine on a vessel in Everett for five days in January 2006, and two responders from Everett removed tires from the large barge in Tacoma in December 2005.

With respect to permanent interchange, Employee Services Administrator Eaton testified that transfers of responders have occurred "on occasion," but she could not provide any specific examples. The record does not reveal any instances of responders transferring into, or out of, the Tacoma facility.

5. Geographic Proximity

Employer offered into evidence a document showing the distance between the Tacoma facility and the other facilities in the Pacific/Northwest region. The Seattle facility is the closest at 35 miles, while the Honolulu facility is the farthest at 2700 miles. Distance from the Tacoma facility to the other facilities is as follows. Everett is 64 miles; Port Angeles is 105 miles; Anacortes is 112 miles; Bellingham is 124 miles; and Astoria is 147 miles

6. Bargaining History

There is no indication in the record that the responders in the petitioned-for unit at the Tacoma facility have ever been represented by any labor organization. There is also no evidence of any bargaining history on a multi-facility basis among Employer's responders in the Pacific/Northwest Region. The Petitioner does not seek to include any other employees in the unit beyond the responders at the Tacoma facility. Further, there is no evidence that any other labor organization is seeking to represent Employer's responders on either a single-facility or multi-facility basis.

C. Acting Supervision

The record establishes that Connelly has filled in for supervisor Gulliford when Gulliford was absent for 6 weeks on vacation and another 3 weeks when Employer cascaded Gulliford to the Gulf of Mexico to respond to hurricane damage. Wright testified that Connelly also filled in for Gulliford an additional 1 to 3 weeks during the past year. During the period that Connelly substituted for Gulliford, he attended one supervisor's meeting and made job assignments based on a plan of tasks provided by Gulliford that the latter wanted accomplished. Unlike Gulliford, Connelly could not sign employees' timesheets while acting for Gulliford. Connelly also did not have authority to hire, terminate, promote, evaluate, or discipline employees or approve employee requests for time off, vacation, or sick leave. Connelly also received his regular pay while substituting for Gulliford.⁶

III. LEGAL ANALYSIS

A. Appropriate Unit

Section 9(b) of the Act confers on the Board the discretion to establish the unit appropriate for collective bargaining and to decide whether such unit shall be the employer unit, craft unit, plant unit, or subdivision thereof. There is nothing in the Act which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996). Accord *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991).

A single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Cargill, Inc.*, 336 NLRB 1114 (2001); *J&L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board examines factors such as centralized control over daily operations and labor relations, including the extent of local autonomy; the degree of employee interchange, transfer, and contact; functional integration; similarity of skills, functions, and working conditions; geographic proximity; and bargaining history, if any. *Dattco, Inc.*, 338 NLRB 49, 50 (2002); *New Britain Transportation Co.*, 330 NLRB 397n (1999). The degree of interchange and separate supervision are "of particular importance in determining whether the single-facility presumption has been rebutted." *Mercy Medical Center San Juan*, 344 NLRB No. 93, slip op. at 1 (June 1, 2005). The party opposing the single-facility unit has the "heavy burden of overcoming the presumption." *Id.* Accord *Trane*, 339 NLRB 866, 867 (2003).

After applying the above factors to the record evidence, I conclude that the Employer has failed to meet its heavy burden of overcoming the presumption in favor of the single-facility unit sought by the Petitioner. In reaching this conclusion, I rely, in particular, on the local autonomy over labor relations at the Tacoma facility, the lack of geographic proximity among the facilities that the Employer claims must be included, and the lack of significant employee interchange between the Tacoma facility and the other facilities.

The record reveals separate supervision and significant local autonomy over labor relations at the Tacoma facility. Response supervisor Gulliford is the individual in charge at the Tacoma facility. The four responders report to him and he determines their job or training

⁶ Connelly received a bonus following the period that he acted for Gulliford. It is unclear from the record, however, whether Employer issued the bonus to Connelly because of his acting supervisory duties.

assignments. Gulliford also authorizes responders' overtime and weekend work, approves vacation and sick leave requests, and verbally disciplines responders on rare occasions. In exercising this authority, he does not need to obtain approval from regional or national management. Gulliford also plays a key role in the hiring of responders. In conjunction with the regional Employee Services Administrator, Gulliford interviews and evaluates applicants, and makes recommendations concerning whether to hire a responder applicant. In the two cases where Gulliford recommended the hiring of the responder applicants, the Employer followed his recommendations and hired the applicants. Gulliford is also responsible for preparing the initial performance evaluations for the responders at Tacoma. Although the evaluations must be reviewed and approved by regional management, Gulliford is the one who discusses the evaluation with the employee. Finally, Gulliford acknowledged that he is the person who would attempt to resolve responders' complaints or grievances, though he could not provide any examples of doing that.

Although the Employer is correct that there is also evidence of centralized control over operations and labor relations at the regional and national levels regarding hiring, firing, discipline, wages, benefits, and personnel policies, I find that the centralization of these functions is insufficient to negate the separate identity of the Tacoma facility for a couple of reasons. First, although Employer places emphasis of this control at the national and regional level, Employer has conceded that a unit that is smaller than a nationwide or regional unit is appropriate. Thus, Employer now claims that a unit comprising only Washington State facilities is appropriate even though that unit does not comport with any administrative or managerial grouping by the Employer. See *Clarian Health Partners*, 344 NLRB No. 28, slip op. at 4 (Feb. 28, 2005) (two-facility unit sought inappropriate where the two-facility grouping does not comport with any of the employer's administrative, managerial, or supervisory departments); *Laboratory Corp. of America Holdings*, 341 NLRB No. 140, slip op. at 4 (May 28, 2004) (same). Moreover, Employer has not shown that it decides or implements any significant labor relations or operational policies that pertain only to its Washington State facilities. Second, the Board often discounts the existence of centralized control where, as here, local autonomy over labor relations exists at the single facility. See, e.g., *Mercy Medical Center San Juan*, *supra*, slip op. at 2 (Board finds that in light of significant local autonomy, employer did not rebut single-facility presumption notwithstanding the high degree of centralization of administration and labor policies among the four facilities); *North Hills Office Services*, 342 NLRB No. 25, slip op. at 1 fn. 3 (July 9, 2004) (Board finds that single-facility unit remains appropriate where supervisors at that facility retained at least limited local autonomy); *New Britain Transportation Co.*, 330 NLRB 397 (1999) (presumption of single facility not rebutted despite employer's centralized control over daily operations and labor relations where local autonomy over labor relations exists at the single facility because dispatchers make work assignments, handle problems encountered by drivers, and approve time off, short-term vacation, and sick leave).

Geographical distance between the Tacoma facility and the other Washington State facilities also supports the conclusion that the single Tacoma unit sought is an appropriate unit. Employer's own document revealed that the Tacoma facility is 112 miles from Anacortes; 124 miles from Bellingham; 64 miles from Everett; 105 miles from Port Angeles; and 35 miles from Seattle. In prior cases, the Board has concluded that much shorter distances between facilities demonstrate a lack of geographical proximity and thereby support a single-facility unit. See, e.g., *Mercy Medical Center San Juan*, *supra*, slip op. at 2 (geographic separation of 12 to 20 miles between single facility and other three facilities favors single-facility unit); *Van Lear Equipment, Inc.*, 336 NLRB 1059, 1063 (2001) (geographical separation favoring single-facility unit where other closest facilities were located 25 miles away); *Rental Uniform Service*, 330

NLRB 334, 336 (1999) (single-facility unit found appropriate where facility located 22 miles, and 50 miles, from other facilities, respectively).

I further find that there is a lack of significant employee interchange between responders at the Tacoma facility and the other Washington State facilities. Although transfers of responders have occurred “on occasion,” there is no specific evidence of permanent interchange of responders into or from the Tacoma facility. Moreover, the amount of temporary interchange, where Tacoma responders assume the duties of responders at other facilities, is limited and nonexistent with respect to responders backfilling for Tacoma responders. While it is true that Tacoma responders and responders at other facilities have contact through training and maintenance tasks, the interaction is irregular and limited. Thus, the Tacoma responders still spend the vast majority of their time interacting with their fellow responders at the Tacoma facility while maintaining and operating the equipment there. For the same reason, I find that the limited number of days that Tacoma responders have spent working alongside other responders from other regions in response to the hurricanes in the Gulf of Mexico and the oil spill in New Jersey are insufficient to demonstrate a significant degree of employee interchange.⁷

Finally, there is no evidence of any bargaining history on a multi-facility basis here. This factor also supports the presumption in favor of the single-facility unit. *Rental Uniform Service*, 330 NLRB 334, 336 (1999).

In concluding that the single-facility unit sought is appropriate, I recognize that Employer has presented evidence showing that a multi-facility unit would also be appropriate. Besides the evidence of centralized control over operations and labor relations discussed above, the record also demonstrates that the responders at Tacoma have similar skills, engage in the same duties, and receive the same wages, benefits, and other terms of employment as responders at Employer's other facilities. Such evidence, however, is insufficient to demonstrate that the Tacoma unit has been so effectively merged into the other facilities so as to lose its separate identity. *Rental Uniform Service, supra* (similarity in skills, pay, and job function, as well as centralized control of labor relations insufficient to overcome presumption favoring single-facility unit); *First Security Services Corp.*, 329 NLRB 235 (1999) (same). This is particularly true where, as here, there exists separate supervision and local autonomy over labor relations at the Tacoma facility and a lack of significant employee interchange. *Mercy Medical Center San Juan*, 344 NLRB No. 93, slip op. at 1 (June 1, 2005) (degree of interchange and separate supervision are particularly important in determining whether the single-facility presumption rebutted). Accord *Cargill, Inc.*, 336 NLRB 1114 (separate local autonomy, geographic separation, and lack of substantial interchange favor single-facility unit).

The cases cited in Employer's brief do not require a different result. Contrary to Employer's argument that *Dattco, Inc.*, 338 NLRB 49 (2002), and *P.S. Elliott Services, Inc.*, 300 NLRB 1161(1990), compel the conclusion that a single-facility unit is not appropriate here because of Employer's centralized operations and labor relations, those cases are distinguishable. Unlike here, there was no significant local autonomy over labor relations in the single location units at issue in those cases. This difference is significant because, as noted above, centralized control is insufficient to rebut the single-facility presumption “where the evidence demonstrates significant local autonomy over labor relations.” *New Britain Transportation Co.*, 330 NLRB 397 (1999). I further find that Employer's reliance on *Clarian*

⁷ I take administrative notice of Administrative Law Judge McCarrick's February 15, 2006, decision in *Marine Spill Response Corp.*, Case 21-CA-36663, in which he reached the same conclusion.

Health Partners, 344 NLRB No. 28 (Feb. 28, 2005), is misplaced. Unlike the present matter, that case did not concern the single-facility presumption. Rather, the union there had attempted to carve out a unit composed of skilled maintenance employees at 2 of 3 hospitals operated by the employer. The Board found that the two-facility unit was inappropriate because, *inter alia*, the skilled maintenance employees at all 3 hospitals shared common supervision and the three locations shared geographical proximity because the third hospital excluded by the union was less than 1 mile away from the other two hospitals. The Board specifically noted that it was not deciding the issue presented here--whether employees at each individual facility would constitute an appropriate unit. *Id.*, slip op. at 4 fn. 11.

Based on the record evidence and the precedent described above, I find that Employer has failed to rebut the presumption that the single-facility unit in Tacoma sought by Petitioner is an appropriate unit. I shall therefore direct an election among responders employed by Employer at its Tacoma facility.

B. Supervisory Status

At the hearing, Employer took the position that Tacoma master responder Jason Connelly should be excluded from any unit found appropriate on the basis that he was a supervisor under Section 2(11) of the Act because he fills in for supervisor Gulliford when Gulliford is absent from the Tacoma facility due to vacation and work assignments.⁸ The test for determining the status of employees who substitute for a supervisor is whether they spend a regular and substantial part of their working time performing supervisory tasks. *Carlisle Engineered Products, Inc.*, 330 NLRB 1359 (2000). The sporadic assumption of supervisory duties by an employee does not establish supervisory status. *Webco Industries*, 334 NLRB 608, 610 (2001). The party claiming that an employee is a supervisor has the burden to establish that the employee possessed or exercised statutory supervisory authority during those occasions when the employee substituted for the supervisor. *Id*

Connelly filled in for supervisor Gulliford for approximately 10 weeks, the majority of which occurred while Gulliford was on vacation. During the period that Connelly substituted for Gulliford, he did not possess or exercise any of the traditional indicia of supervisory status. Thus, he could not hire, terminate, promote, evaluate, or discipline employees, approve their timesheets, or approve employee requests for time off, vacation, or sick leave. Although Connelly made job assignments, they were based on a plan of tasks that Gulliford provided. Connelly also received his regular pay while substituting for Gulliford.

Under these circumstances, I find that Employer has failed to meet its burden to show that Jason Connelly is a supervisor under the Act. Employer has not shown that Connelly exercised or possessed any meaningful supervisory authority on a regular basis. Even assuming that as an acting supervisor Connelly possessed all of Gulliford's duties other than signing time sheets, his assumption of those duties has been on a sporadic basis. Although he acted during Gulliford's six-week vacation, an employee's "sporadic assumption of supervisory duties, e.g., during annual vacation periods of a regular supervisor, is not sufficient to establish supervisory status at other times." *Latas de Aluminio Reynolds, Inc.*, 276 NLRB 1313 (1985). Accord *Jakel Motors, Inc.*, 288 NLRB 730 (1988). Moreover, Gulliford's 3-week deployment to Louisiana was an unusual occurrence that will not likely occur on a regular basis. Accordingly, I find that the record is insufficient to establish that Employer met its burden of demonstrating that

⁸ Employer did not address this issue in its brief.

Connelly should be excluded from the unit as a supervisor, and I shall therefore include him in the unit found appropriate.

IV. CONCLUSION

In view of the above, the record as a whole and the parties' briefs and arguments, I find that the following Unit of employees share a separate community of interest and, thus, constitute an appropriate unit for the purposes of collective bargaining. Accordingly, I shall direct an election in the following Unit of employees:

All regular full and part-time responders, lead responders, and master responders employed by the Employer at its Tacoma, Washington location; excluding all office clericals, confidential employees, managers, guards and supervisors as defined by the Act.

There are approximately 4 employees in the Unit. **V.**

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INLANDBOATMEN'S UNION OF THE PACIFIC, MARINE DIVISION, ILWU.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before May 1, 2006. No extension of time

to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list will be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case no extra copies need be submitted.

B. Notice of Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m. EST on May 8, 2006. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

DATED at Seattle, Washington, this 24th day of April 2006.

/s/ f Richard L. Ahearn~

Ri

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